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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,671	12/06/2005	Gerardus Swinkels	P28809	2972
7055 7590 01/15/2010 GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191				
EXAMINER HENKEL, DANIELLE B				
ART UNIT		PAPER NUMBER		
1797				
NOTIFICATION DATE		DELIVERY MODE		
01/15/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/559,671

Applicant(s)

SWINKELS, GERARDUS

Examiner

DANIELLE HENKEL

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 37-38 is/are allowed.
- 6) ☒ Claim(s) 18-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/6/2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/10/2009 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 18-22, 24-32 and 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHLIMME (US 3849255) in view of GRAFF (US 2933435).

a. With respect to claim 18, SCHLIMME teaches a device for malting grains comprising a tower with a plurality of stories (working chambers) delineated by story floors and air-permeable annular supporting floors (racks) associated with each story, structured and arranged to support grain (Column 1, lines 59-65, Figure 1). SCHLIMME also teaches air flow paths associated with each story comprising supply channels (ducts), displacement elements (air conveyer), and

discharge channels (ducts) in which the air flows through the supply channels, displacement elements, supporting floors and the discharge path (Column 3, lines 6-24, Figure 4). SCHLIMME also teaches a central cylindrical space at an inner diameter of the annular supporting floors (Column 1, lines 59-60, Figure 3) and that each story comprises an outflow opening (duct doors) allowing an air flow path from a respective supply channel to a respective floor and its associated grain and; a flow-through opening allowing an air flow path to a respective discharge channel (Column 2, lines 5-39). SCHLIMME does not explicitly disclose the cylindrical space being divided to define the channels as segmented cross-sections separated by radial intermediate walls. However, GRAFF discloses a device for malting grains in a tower in which a central cylindrical stack is divided in a plurality of compartments (channels) by radial walls (segmented cross-sections) (Column 3, lines 22-28, Figure 2). At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of SCHLIMME to include the central space divided by radial intermediate walls as taught by GRAFF because it constitutes an efficient use of space and insures that all air must go through the malt before leaving the apparatus, therefore increasing the efficiency of the operation (Column 6, lines 39-50).

- b. With respect to claim 19, SCHLIMME teaches air conditioning elements to condition the air supplied to the grain (Column 2, lines 26-30).

- c. With respect to claim 20, SCHLIMME teaches the discharge channel (duct) empties through an opening into an outside environment (Column 3, lines 28-29).
- d. With respect to claim 21, SCHLIMME teaches a central floor opening through at least one of the respective story floors with a supply channel and vertical stacks with supply and discharge channels that are arranged to abut each other as they extend vertically (Column 1, line 60- Column 2, line 21, Figure 3) but doesn't explicitly disclose the vertical stacks extending through the central floor opening. At the time of the invention it would have been obvious to one of ordinary skill in the art to place the vertical abutting stacks in the central floor opening, since it has been held that rearranging parts of an invention involves only routing skill in the art. *In re Japikse*, 86 USPQ 70. As further evidence that placing a discharge path in the central cylindrical stack is a design choice that is well known in the art REYNOLDS shows both the supply and discharge paths arranged in the central cylinder stack (Figure 2).
- e. With respect to claim 22, SCHLIMME teaches the central floor opening is circular (Column 1, lines 59-60).
- f. With respect to claim 24, SCHLIMME teaches the claimed invention comprising a circular central opening except for the floor opening being at least 10 meters in diameter. At the time of the invention it would have been obvious to one of ordinary skill in the art to have a diameter of at least 10 meters, since it has been held that where the general conditions of a claim are disclosed in the

prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

g. With respect to claim 25, SCHLIMME teaches the claimed invention comprising a circular central opening except for the floor opening being at least 12 meters in diameter. At the time of the invention it would have been obvious to one of ordinary skill in the art to have a diameter of at least 12 meters, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

h. With respect to claim 26, SCHLIMME teaches the claimed invention comprising annular supporting floors except for the interior diameter being at least 10 meters. At the time of the invention it would have been obvious to one of ordinary skill in the art to have a diameter of at least 10 meters, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

i. With respect to claim 27, SCHLIMME teaches the claimed invention comprising annular supporting floors except for the interior diameter being at least 12 meters. At the time of the invention it would have been obvious to one of ordinary skill in the art to have a diameter of at least 12 meters, since it has been held that where the general conditions of a claim are disclosed in the prior art,

discovering the optimum or workable ranges involves only routine skill in the art.

In re Aller, 105 USPQ 233.

j. With respect to claim 28, SCHLIMME teaches the claimed invention comprising annular supporting floors except for the radial span being at least 7 meters. At the time of the invention it would have been obvious to one of ordinary skill in the art to have a radial span of at least 7 meters, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

In re Aller, 105 USPQ 233.

k. With respect to claim 29, SCHLIMME teaches the supporting floor is rotatable around a rotational axis extending through a central axis of the annular shape (Column 2, line 55-67).

l. With respect to claim 30, SCHLIMME teaches air conditioning elements located within an outer periphery of the story floors (Column 2, lines 26-30, Figure 1), but does not explicitly disclose them located below a lowermost supporting floor. At the time of the invention it would have been obvious to one of ordinary skill in the art to place the air conditioning below the lowermost floor since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86, USPQ 70.

m. With respect to claim 31, SCHLIMME teaches air conditioning elements located within an outer periphery of the story floors (Column 2, lines 26-30, Figure 1), but does not explicitly disclose them located above an uppermost

supporting floor. At the time of the invention it would have been obvious to one of ordinary skill in the art to place the air conditioning above the uppermost floor since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86, USPQ 70.

n. With respect to claim 32, SCHLIMME teaches air conditioning elements located within an outer periphery of the story floors (Column 2, lines 26-30, Figure 1).

o. With respect to claim 35, SCHLIMME teaches the supporting floors are air permeable (Column 3, lines 15-17).

p. With respect to claim 36, SCHLIMME teaches the supporting floors are air permeable and therefore by definition are perforated (Column 3, lines 15-17).

4. Claims 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over SCHLIMME (US 3849255) in view of NEUBERT (US 3730846).

a. With respect to claim 33, SCHLIMME does not explicitly disclose another supporting floor for drying below the lowermost supporting floor. However, NEUBERT teaches a space below the lowermost supporting floor (treatment spaces) to support germinated grain to be dried (Column 4, lines 36-38, Figure 1). At the time of the invention it would have been obvious to one of ordinary skill in the art to modify the germinating tower of SCHLIMME to include the supporting floor for drying grain below the lowermost floor as taught by NEUBERT because it allows for heating the above chambers to a desired temperature (Column 6,

line 72 - Column 7, line 5), as well as allows for the use of a simple gravity feed arrangement to provide germinated grain to the drying space (Column 8, lines 50-57).

b. With respect to claim 34, NEUBERT teaches the supporting floor to support the germinated grain to be dried has dimensions similar to those of the supporting floors for germinating (Column 7, lines 6-14).

Allowable Subject Matter

5. Claims 37-38 are allowed.
6. The following is a statement of reasons for the indication of allowable subject matter: The primary reason for allowance of claims 37 and 38 is that the prior art does not teach or fairly suggest a method for malting grains or device for malting grains comprising a central opening having channels extending through wherein the channels are at least one supply and one discharge channel, so that both supply and discharge of air takes place in the central opening.

Response to Arguments

7. Applicant's arguments filed 11/10/2009 with respect to claim 18, have been fully considered but they are not persuasive as detailed below.
8. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies

(i.e., a central chamber that is both a supply channel and a discharge channel, page 11, lines 15-17) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Currently claim 18 recites in the alternative that the perpendicular channels of the central space are supply or discharge channels. Therefore the disclosure of SCHLIMME that the central opening within the respective story has the respective air supply channel path for the story flows arranged through it (Column 3, lines 31-40, Figures 1, 4) reads on the claim limitation. Examiner suggests amending claim 18 to include the limitation requiring both the supply and discharge channel extending within the central opening (Claim 38, lines 16-18) to overcome the rejection over SCHLIMME.

9. Applicant's arguments, filed 11/10/2009, with respect to claims 37 and 38 have been fully considered and are persuasive. The rejection of claims 37 and 38 has been withdrawn.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIELLE HENKEL whose telephone number is (571)270-5505. The examiner can normally be reached on Mon-Thur: 11am-8pm, Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Marcheschi can be reached on 571-272-1374. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DANIELLE HENKEL/
Examiner, Art Unit 1797

/William H. Beisner/
Primary Examiner, Art Unit 1797